

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11506 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

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2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

ANANTRAI L VADNAGRA

Versus

STATE OF GUJARAT

Appearance:

Mr.D.M.Thakkar for

M/S THAKKAR ASSOC. for Petitioner

MR.B.Y.MANKAD, learned A.G.P. for the respondents.

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 18/02/99

ORAL JUDGEMENT

1. This Special Civil Application is directed against the order dated 2.5.94 passed against the petitioner by the Health & Family Welfare Department by the order of Governor under the signatures of the Deputy Secretary whereby the penalty of compulsory retirement has been imposed against the petitioner on the basis of an inquiry held against him. This order dt.2.5.94 also finds mention in the office order (communication) dt. 9.5.94, a copy of which was sent to the petitioner by the Chief Insurance Medical Officer, Class-I, Employees State Insurance Scheme, D1, Rajkot. The petitioner, holding

the qualification of Bachelor of Ayurvedic Medicine and Surgery, was initially appointed as Insurance Medical Officer on 17.10.66. He was promoted as Insurance Medical Officer, Class II in May 1976. A charge-sheet was served upon the petitioner alongwith the Memo dated 28.4.87 and the petitioner was subjected to an inquiry on the basis of the charge-sheet. The charge-sheet contain 17 charges in all with regard to the irregularities in the Certificates issued to different insured employees as also discrepancies in the duplicate copies of such Certificates and further allegations against the petitioner for making attempt to destroy the relevant records. The petitioner's case is that he had filed a detailed reply denying the charges through his interim reply dt.9.5.87. It is also the petitioner's case that he had moved applications dt. 7.5.87, 18.5.87, 10.6.87 followed by the letter dt.27.4.89 whereby he demanded the copies of certain documents mentioned in these letters, but the same were not supplied to him despite his repeated requests, as aforesaid. Ofcourse few documents were supplied to him on 21.11.89 but even while doing so the copies of about 12 Medical case papers were not supplied to him nor the copies of the Certificate Book, Accident Forms, Reference Forms etc. were given to him. The petitioner has also raised the grievance that on 4.12.89 he again made representation to the Director, E.S.I. pointing out therein that he had not been supplied with the documents and the Inquiry Officer was proceeding ahead with the inquiry without affording reasonable opportunity to him to defend the case of the petitioner in the Departmental Inquiry. Copies of all these letters dt. 7.5.87, 18.5.87, 10.6.87, 27.4.89 and 4.12.89 have been placed on record. Thus, the inquiry proceeded against the petitioner while the petitioner was not supplied the copies of the documents asked for by him in the applications, as aforesaid. The Presenting Officer on behalf of the Department submitted written submissions on 16.4.91 and the petitioner also submitted written submissions on 7.5.91 before the Inquiry Officer. In para 9 of the petition, the petitioner has averred that in his written submissions, made before the Inquiry Officer, the petitioner had also raised the grievance with regard to the non supply of the documents asked for by him and he also referred to the number of Paragraphs of the E.S.I. Medical Manual containing procedural instructions pointing out that as per Para 6 of the said Manual, before the issue of the Certificate, the Insurance Medical Officer has to satisfy himself about the identity of the insured patient and during the course of treatment he would ordinarily see the patient's identity card and that the Certificates were issued by

the petitioner only to those insured employees who brought the identity cards and, therefore, there was no irregularity or illegality committed by the petitioner in issuing the Certificates. Reference has also been made to Paras 82, 83, 83.5, 83.8, 85, 88 and 92 of this Manual to explain that it is not necessary that the Insurance Medical Officer should call the patient every day and that he should advise him according to the needs of the case and hence the petitioner did not commit any irregularity or illegality in discharge of his duties. The written submissions dated 7.5.91 submitted by the petitioner before the Inquiry Officer have also been placed on record of this Special Civil Application as Annexure 'E'.

The Inquiry Officer submitted his report holding all the charges to be proved against the petitioner except charge No.9 and Health and Family Welfare Department informed the petitioner vide its letter dt.3.12.92 that whereas the report of the Inquiry Officer had been received and the Disciplinary Authority does not agree with the finding of the Inquiry Officer on charge No.9 and the reasons had been given for disagreement on the findings on charge No.9 and while sending this communication dt.3.12.92 containing the reasons for disagreement, a copy of the Inquiry Report was also sent to the petitioner. The petitioner filed a detailed reply on 16.12.92 pointing out therein that the petitioner had been wrongly found to be guilty by the Inquiry Officer, the entire inquiry proceedings are vitiated as the petitioner had been denied the relevant documents, on which the Department had relied on. A grievance had also been raised that the Inquiry Officer had not at all considered the deposition of number of witnesses and without considering such depositions, the findings were recorded against the petitioner. The petitioner had thus offered his criticism of the findings of the Inquiry Officer vide Annexure "G" dt.16.12.92 and had also reiterated his grievance with regard to the non supply of the documents asked for by him through the repeated applications, referred to as above. After the filing of the petitioner's reply Annexure 'G' dated 16.12.92, the respondent No.1 i.e. Health and Family Welfare Department passed the order dt.2.5.94 against the petitioner imposing the penalty of compulsory retirement against him and the same was conveyed to the petitioner by Chief Insurance Medical Officer, Class-I vide communication dt.9.5.94. Aggrieved from the order dt.2.5.94 read with the order (communication) dt.9.5.94 the petitioner preferred the present Special Civil Application on 3.10.94. Rule was issued on 20.12.94

after issuing notice to the respondents. While the matter is pending before this Court since 1994, the respondents have not cared to file the return nor any relevant record has been produced even for the perusal of the Court.

2. I have heard learned counsel for the petitioner and the learned A.G.P. and have perused the charge-sheet, the Inquiry Report and the order of punishment, as has been passed by the Health & Family Welfare Department of the Government of Gujarat and other relevant papers, copies of which have been placed on record by the petitioner. On behalf of the petitioner, several grounds have been taken to assail the punishment order dt.2.5.94. However, I do not consider it necessary to deal with all the grounds, as have been raised. It will be sufficient to deal with two grounds, namely, (i) that the charge-sheet was given to the petitioner in the year 1987 at a belated stage while the charges relate to the year 1984, and (ii) that the petitioner has been denied a reasonable opportunity in the course of inquiry inasmuch as the documents asked for by him had not been made available to him despite his repeated requests.

3. Thus, the delay in starting the departmental inquiry and denial of the documents and reasonable opportunity are the two grounds, which have been seriously pressed before this Court.

4. So far as the ground relating to the delay in starting the departmental inquiry with regard to the charges of 1984 is concerned, I do not find that the inquiry proceedings can be rendered vitiated on this ground alone in the facts and circumstances of this case. The contents of the allegations indicate that they relate to certain Certificates, which have been issued by the petitioner to insured patients in the year 1984 in different cases and it cannot be said that in the facts of this case the petitioner has suffered any prejudice on account of the delay in starting the Departmental Inquiry because the entire material, which could form the evidence relating to the charges, was available and it is not the case of the petitioner that any witness or any part of the evidence had withered away during this period from 1984 to 1987. Even otherwise, it is not possible for the Disciplinary Authority to frame the charge-sheet at the stage of the alleged irregularity unless the misconduct comes to its notice and, therefore, the cases in which any misconduct is committed by any employee or Officer, it is not necessary that the misconduct is instantaneously noticed by the Disciplinary Authority so

as to frame charge and start the inquiry. The first ground raised on behalf of the petitioner is, therefore, rejected.

5. The next ground is with regard to the denial of the documents and the reasonable opportunity in the course of inquiry. In this regard, apart from the fact that the averments made by the petitioner have not been controverted by the respondents before this Court, this Court finds that right after day one the charge-sheet was served upon the petitioner with the Memo the petitioner had asked for the supply of the copies of the documents. It also cannot be said in the facts of this case that the petitioner did not co-operate in the inquiry or that he was interested to prolong the proceedings. It is noticed that the petitioner made the first application for supply of documents on 7.5.87 and immediately thereafter within two days he also filed his interim reply on 9.5.87 and even thereafter he moved the applications dt.18.5.87 and 10.6.87 asking for the copies of these documents. These applications dated 7.5.87, 18.5.87 and 10.6.87 have all been placed on record collectively as Annexure 'B'. It is not the case of the respondents that any reply to any of these applications was sent to the petitioner or that he was informed and appraised as to why the supply of these documents was not required. The petitioner also moved an application on 27.4.87, which is placed on record as Annexure 'C', raising the grievance against the non supply of the documents but this too does not appear to have been replied. The petitioner has stated that after about two years from the service of the charge-sheet for the first time on 21.11.89 i.e. after more than two years of his filing the interim reply of 9.5.97, few documents were made available to him on 21.11.89 and yet the copies of about 12 medical case papers were not supplied to him. Nor the copies of Certificate Book, Accident Forms or Reference Forms were made available to him and he was left with no option but to face the inquiry in absence of the documents, which he could make use of in his defence. Not only this, even after 21.11.89 when few documents were made available to him, he again submitted an application on 4.12.89, which is placed on record as Annexure 'D' and this time he had represented before the Director, E.S.I. that the copies of the documents had not been supplied to him. It is unfortunate that even this request did not yield any response and the inquiry proceedings were concluded and the report was given holding the charges to be proved except charge No.9. The Disciplinary Authority did not agree with this finding of the Inquiry Officer on charge No.9 and the Disciplinary Authority while giving reasons

for disagreement found that all the 17 charges were proved against him and on that basis the punishment of compulsory retirement had been imposed against him vide impugned order dt.2.5.94. It is also noted that even in his written submissions dt.7.5.91 the petitioner had raised a grievance that the copies of the documents had not been supplied to him and this grievance was reiterated by the petitioner even before the Disciplinary Authority when he offered his criticism against the findings of the Inquiry Officer through his detailed reply dt.16.12.92. It is, therefore, clearly established on record available before this Court that the petitioner had made repeated requests for supply of the copies of the documents immediately after the service of the charge-sheet, again after the filing of the interim reply, reiterated this grievance more than once, also raised this grievance while the inquiry was pending and even after the conclusion of the inquiry and before the Disciplinary Authority while giving his criticism against the findings recorded by the Inquiry Officer. It also appears from the record that at no stage, the petitioner's grievance with regard to the non supply of the documents has been dealt with or answered. No part of the report of the Inquiry Officer or the document by which the reasons for disagreement with the finding on charge No.9 was sent to the petitioner by the Disciplinary Authority, has been pointed out to show that this grievance has been dealt with or answered. It is not the case of the respondents that these documents were not relevant to the petitioner's defence in the inquiry or that the petitioner has not been prejudiced in any manner on account of non supply of these documents. Even otherwise in such matters, the satisfaction of the authorities that the documents asked for are not relevant is not of much significance because it is for the petitioner to choose as to which document will be relevant or germane for him to defend himself against the charges and in the facts of this case, the petitioner has categorically stated in para 17 that he has been denied number of documents, on which the respondents-authorities have relied on while coming to the conclusion that the petitioner is guilty of the charges. What is more dismal and shocking and noticed with regrets no less than surprise by this Court in the facts of this case, is that even the Disciplinary Authority while passing the ultimate order imposing the punishment on 2.5.94 has not said a word about this grievance raised by the petitioner through out the proceedings and this grievance raised in the written submissions made by the petitioner before the Inquiry Officer and even in reply Annexure 'G' submitted for consideration of the Disciplinary Authority on

16.12.92 has been left unnoticed and has not been dealt with. It is, therefore, clear that the petitioner had been denied important documents asked for by him, which were relevant and germane to the defence and on that ground he has suffered a prejudice so as to defend himself in the inquiry and it has resulted into the denial of reasonable opportunity and violation of principles of natural justice and the respondents have failed even to take notice and deal with this grievance, much less to talk about any justification for the same. The inquiry proceedings held against the petitioner, therefore, stand vitiated and the consequential order of punishment passed on that basis on 2.5.94 and conveyed to the petitioner on 9.5.94 can not be sustained in the eye of law.

6. The upshot of the aforesaid adjudication is that this Special Civil Application succeeds, the inquiry proceedings held against the petitioner stand vitiated and are declared to be illegal, the impugned order dt.2.5.94 passed by the Health & Family Welfare Department of the Government of Gujarat by the order of the Governor, issued under the signatures of the concerned Deputy Secretary read with the order (communication) dt.9.5.94 is hereby quashed and set aside. All legal consequences shall follow as if the impugned order of punishment had not been passed against the petitioner. This Special Civil Application is allowed and the Rule is made absolute in the terms, as above. No order as to costs.